

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SHILOH HOOD, an individual

No. C 06-0024 SBA

Plaintiff,

ORDER

v.

[Docket No. 23]

THE TERMINIX INTERNATIONAL
COMPANY, L.P., a Delaware limited
partnership, and DOES 1 to 20,

Defendants.

This matter comes before the Court on the Motion of Defendant Terminix International Company, L.P. to Dismiss Plaintiff's Action, or, in the Alternative, Stay the Action Pending Arbitration. Having read and considered the arguments presented by the parties in the papers submitted to the Court, the Court finds this matter appropriate for resolution without a hearing. The Court hereby DENIES without prejudice Defendant's Motion.

In the instant Motion, Defendant seeks to dismiss or to stay Plaintiff's action pending arbitration. Defendant asserts that the action should be dismissed or stayed pursuant to the Employment Agreement and the Arbitration Agreement which the parties entered into on November 6, 2001. The Employment Agreement provides, in relevant part:

The Employer and Employee agree that, to the fullest extent permitted by law, any and all disputes between them will be submitted to mediation upon terms mutually agreeable to both parties. In the event the parties do not resolve such controversies through mediation, then the Employer and Employee agree that, to the fullest extent permitted by law, any and all such controversies between them will be submitted for resolution to binding arbitration in

1 accordance with the attached Arbitration Agreement, which is incorporated herein by
2 reference. The parties understand and agree that *in the event mediation is unsuccessful*,
3 then arbitration will be the exclusive forum for resolving disputes between them, including
4 statutory claims and all disputes arising out of the employment relationship and the
5 termination of such relationship.

6 (emphasis added).

7 The parties concede that they have not engaged in mediation to resolve their disputes, as
8 provided by the Employment Agreement. Plaintiff maintains that the parties' failure to submit to
9 mediation renders this Motion premature. Defendant agrees to participate in mediation, however,
10 requests the Court to rule on this Motion first. The Court declines to render what would be
11 tantamount to an advisory opinion. *See generally, Steel Co. v. Citizens for a Better Environment*,
12 523 U.S. 83, 101 (1998) (noting that federal courts lack authority to issue advisory opinions). A
13 mediation between the parties may resolve their dispute. The parties' agreement to arbitrate is only
14 triggered by an unsuccessful mediation. If and when that occurs, disputes regarding arbitration will
15 be ripe for the adjudication by this Court.

16 Accordingly,

17 IT IS HEREBY ORDERED THAT the Motion of Defendant Terminix International
18 Company, L.P. to Dismiss Plaintiff's Action, or in the Alternative, Stay the Action Pending
19 Arbitration is DENIED without prejudice as premature.

20 IT IS FURTHER ORDERED THAT the Case Management Conference is CONTINUED
21 from May 16, 2006 at 1:00 p.m. to July 6, 2006 at 3:30 p.m.

22 IT IS SO ORDERED.

23 Dated: 5/15/06

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25 SAUNDRA BROWN ARMSTRONG
26 United States District Judge
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